

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
Implementation of Section 207 of the )  
Telecommunications Act of 1996 ) CS Docket  
 ) No. 96-83  
Restrictions on Over-the-Air )  
Reception Devices: Television Broadcast )  
and Multichannel Multipoint Distribution )  
Service )

COMMENTS OF THE ASSOCIATION  
FOR MAXIMUM SERVICE TELEVISION, INC.

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The Association for Maximum Service Television, Inc. ("MSTV") hereby files comments in response to the Notice of Proposed Rulemaking released in the above-captioned docket on April 4, 1996 (the "Notice").<sup>1/</sup>

MSTV has long recognized the problem of burdensome state, local and private zoning regulations that impair the public's ability to receive television programming services. In 1990, MSTV conducted a comprehensive survey of its members relating to the existence of burdensome local and state ordinances, as well as private homeowners' association restrictions. The response to MSTV's survey was overwhelming: an ever increasing number of state, local and private homeowners' associations impose severe burdens or even preclude their residents from installing outdoor television

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<sup>1/</sup> MSTV is a non-profit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the public's local broadcast service.

antennas on their own property.<sup>2/</sup> These restrictions take the form of set-back requirements, height limitations, and restrictions on the placement and construction of television receiving antennas.<sup>3/</sup>

Based on the results of this survey, MSTV urged the Commission to initiate a rulemaking proceeding to address the growing problem of unreasonable state and local zoning regulation of outdoor antenna installations. MSTV also noted a critical, related concern identified in its survey: burdensome zoning regulations that restrict the placement and construction of broadcast transmission antennas and towers.<sup>4/</sup>

More recently, MSTV urged the Commission once again to expand the scope of its proceedings in the Notice of Proposed Rulemaking regarding Preemption of Local Zoning Regulation of Satellite Earth Stations,<sup>5/</sup> to preempt not only

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<sup>2/</sup> See Comments of MSTV, Rep. No. DS-1311, at 3 (July 12, 1993); Reply Comments of MSTV, Rep. No. DS-1311 (August 16, 1993); Comments of MSTV, IB Docket No. 95-59 (July 1995). See, e.g., Jefferson County, Colorado, Resolution No. CC93-357, "Ordinance to Amend Sections 1, 2, 6, and 15 of the Zoning Resolution" (adopted May 11, 1993) (restricting the placement and operation of television transmission towers); Township of Bloomfield, Michigan, Ordinance No. 443 (regulating the placement and/or size of ordinary television antennas); City of Carol Stream, Illinois, Code § 16-12-1(B); Village of Mamaroneck, New York, Code § 100-1 (same); Village of Bloomingdale, Illinois, Ordinance No. 92-77, § 16.3 et seq. (same); City of Boca Raton, Florida, Code § 25-26 (same); City of San Carlos, California, Code § 18.116.135(C) (same).

<sup>3/</sup> See Comments of MSTV (July 12, 1993) at 4; Comments of NAB (July 12, 1993); Comments of Chris TV (February 28, 1992).

<sup>4/</sup> See Comments of MSTV, DS-1311, at 1-2 (July 12, 1993).

<sup>5/</sup> Preemption of Local Zoning Regulation of Satellite Earth Stations, IB Docket No. 95-59, 10 FCC Rcd 6982 (1995).

burdensome zoning regulations on satellite antennas, but also to preempt unreasonable regulation of all antennas, including broadcast receiving antennas and broadcast towers and transmitting antennas.<sup>5/</sup>

MSTV applauds the Commission for responding to the problems identified by MSTV and many other petitioners. This action is timely and consistent with the Commission's congressional mandate to "prohibit restrictions that impair a viewer's ability to receive video programming services through over-the-air reception of television broadcast signals...."<sup>2/</sup> Moreover, MSTV urges the Commission to take swift action in this proceeding because burdensome state, local and private restrictions threaten not only existing television broadcast services, but also the effective transition to the public's future Advanced Television ("ATV") broadcasting.

It is anticipated that many homes that do not require outdoor installation of antennas for NTSC broadcast reception today will require antennas for ATV reception.<sup>8/</sup> It is also likely that each television station will need to erect an additional ATV transmission antenna, and many will

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<sup>5/</sup> See Comments of MSTV, IB Docket No. 95-59, at 5 (July 14, 1995).

<sup>2/</sup> Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56 (1996) at § 207.

<sup>8/</sup> See Comments of MSTV, DS-1311, at 9 & n.14 (July 12, 1993).

have to erect new towers.<sup>2/</sup> Accordingly, burdensome local regulations on broadcast television transmitting antenna structures and sites may preclude or severely impair ATV implementation. Thus, the Commission must make it clear that it is preempting not only unreasonable regulation of television reception devices, but also unreasonable restrictions imposed on the installation, maintenance and use of transmission antennas and transmission towers.

**I. MSTV Supports Broad Preemption of Unreasonable State, Local and Private Restrictions that Impair the Public's Ability to Receive Television Broadcast Signals.**

MSTV strongly supports the Commission's proposed action to presumptively preempt all state, local and private restrictions that impair the public's ability to receive television broadcast signals. In particular, MSTV supports the Commission's proposal to use a broad presumptive approach that does not rely on arbitrary distinctions based on the size and form of antenna and the type of installation that is chosen by the consumer. It would be especially unwise to allow the vagaries of local regulation to dictate the market choices that are available to consumers. The industry is also at a critical juncture in its transition to ATV: the efficient design of receiving antenna installations should not be overburdened by unnecessary government regulation.

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<sup>2/</sup> See In the Matter of Advanced Television Systems and their Impact Upon the Existing Broadcast Service (Third Report and Order), 7 FCC Rcd 6924, 6937 (1992); see also Comments of One-Hundred and Five Broadcast Organizations, MM Docket No. 87-268, at 11-14 (Nov. 16, 1992).

The Commission should also make clear that it is preempting not only restrictions imposed on the antenna itself, but also restrictions relating to the mounting and installation devices that are used in conjunction with antennas. Devices such as "masts," "towers," etc., that are connected to antennas, are often needed to effectively capture over-the-air signals.

Absent a clear showing that the regulation is necessary to achieve an important health or safety objective, all state, local and private restrictions on broadcast antennas and installation devices should be preempted. MSTV also supports the Commission's judgment that private restrictions should be fully preempted because any health and safety objectives will have already been satisfied by local and state regulation.

**II. The Commission Should Preempt Unreasonable Regulations Imposed on All Television Broadcast Devices Including Transmission Antennas and Towers.**

The Commission's considered judgment to preempt restrictions imposed on receiving antennas will not be enough if equally burdensome regulation of transmission antennas and towers is permitted to continue unabated.

As the record in the Commission's proceeding on Local Zoning Regulation of Satellite Earth Stations makes clear, many local zoning authorities have placed severe restrictions on the construction of new transmitter towers or the improvement of existing facilities. In addition, tower

site availability is already limited in many areas.<sup>10/</sup> If this problem continues unabated, the transition to ATV broadcasting will be jeopardized. It is estimated that at least fifty percent of existing broadcast television stations will have to build new towers or modify their existing structures in order to implement the transition to ATV.

To fulfill its congressional mandate to "prohibit restrictions that impair a viewer's ability to receive video programming services," the Commission must take action to preempt unreasonable restrictions that are imposed on the installation, maintenance and use of transmission antennas and transmission towers. To do otherwise would undercut the purpose of the Telecommunications Act of 1996.<sup>11/</sup>

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<sup>10/</sup> See Comments of MSTV at 14 (July 12, 1993); Comments of the National Association of Broadcasters ("NAB"), 45 DSS-MISC-93 (July 12, 1993) (describing difficulties that broadcasters have encountered in building antenna facilities and expressing concern that new technologies such as ATV and digital audio broadcasting may be difficult to implement if providers cannot put up new antennas).

<sup>11/</sup> Although the Commission's focus in this proceeding is on burdensome and conflicting land use/zoning restrictions, other equally serious regulatory impediments exist that may impair the public's ability to receive over-the-air television broadcast services. These include: (1) inconsistent and disparate state and local regulation of radio frequency ("RF") radiation levels; and (2) Federal Aviation Administration ("FAA") regulations restricting the siting and size of transmitter towers based on limitations on the use of navigable airspace.

State and local regulation of RF levels raise potentially serious concerns because local regulatory bodies have been free to arbitrarily impose more stringent emission levels than those established by the FCC, after lengthy rulemaking proceedings and upon the recommendation of the American National Standards Institute ("ANSI"). See 47 C.F.R. § 1.1301 (continued...)

**III. Effective Implementation of ATV Broadcasting Requires Preemption of Unreasonable State, Local and Private Restrictions on Television Broadcast Antennas and Transmission Antennas and Towers.**

The Commission must take action to ensure that state, local and private regulations do not preclude the deployment of ATV receiving and transmission antennas and towers that would otherwise frustrate the federal interest in implementing Advanced Television broadcasting.

As mentioned previously, the transition to ATV will likely require the installation of many more outdoor antennas than are currently required to receive NTSC transmissions. Because the television spectrum will have to accommodate existing NTSC signals as well as new ATV signals during the transition to digital broadcasting, the ATV system will be forced to operate at lower power levels that may necessitate the use of outdoor antennas. In addition, digital service is an "all or nothing" proposition and is subject to a "cliff effect" -- service will be essentially perfect until it falls apart entirely. Thus, viewers who were willing to tolerate

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<sup>11</sup>/ (...continued)  
et seq.

FAA regulations, on the other hand, are clearly necessary but may unintentionally restrict antennas to existing "antenna farms" that are already at maximum capacity.

Accordingly, MSTV urges the Commission to initiate a comprehensive rulemaking proceeding to address the full range of regulatory impediments that impair the public's ability to receive over-the-air television broadcast services, consistent with its congressional mandate to "prohibit restrictions that impair a viewer's ability to receive video programming services...." See § 207, Telecommunications Act of 1996.

degraded NTSC service using rabbit ears or other indoor antennas may have to use outside antennas to receive ATV service at all. Taken together, these factors will lead to the use of many more outdoor antennas than are in use today.

Finally, the implementation of ATV will also require the construction of additional transmission antennas and new transmitter towers. In addition to building new transmitting towers, as stated previously, it is also likely that each television station will need to erect an additional ATV transmission antenna.<sup>12/</sup>

Respectfully submitted,

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<sup>12/</sup> See In the Matter of Advanced Television Systems and their Impact Upon the Existing Broadcast Service (Third Report and Order), 7 FCC Rcd 6924, 6937 (1992); see also Comments of One-Hundred and Five Broadcast Organizations, MM Docket No. 87-268, at 11-14 (Nov. 16, 1992).